1 2 3	David W. Affeld, State Bar No. 123922 Damion Robinson, State Bar No. 262573 David Markevitch, State Bar No. 256163 Affeld Grivakes LLP 2049 Century Park East, Ste. 2460 Los Angeles, CA 90067		
4	Telephone: (310) 979-8700		
5	Attorneys for Plaintiff Michael Zeleny		
7			
8	UNITED STAT	TES DISTRICT COURT	
9	NORTHERN DIS	TRICT OF CALIFORNIA	
10			
11	MICHAEL ZELENY,	Case No. CV 17-7357 RS	
12	Plaintiff,	Assigned to:	
13	VS.	The Honorable Richard G. Seeborg	
14	GAVIN NEWSOM, et al.,	DECLARATION OF DAMION ROBINSON IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE	
15 16	Defendants.	TO MAKE CLARIFYING AMENDMENT TO SECOND AMENDED COMPLAINT	
17		Filed Concurrently:	
18	 Notice of Motion and Motion; Notice of Lodging; Proposed Order. 		
19	Date: October 29, 2020		
20	Time: 1:30 p.m. Courtroom 3, 17 th Floor		
21		Action Filed: December 28, 2017 Trial Date: [Not Set]	
22			
23	I, Damion Robinson, declare:		
24			
25	("Zeleny") in this action. I have personal knowledge of the facts herein or knowledge based		
26	on a review of the records and files of our firm maintained in the ordinary course of business.		
27	I could testify competently to these facts if called upon to do so.		
28	2. We served Zeleny's first set of interrogatories on defendant Attorney		
		-1-	

1	General Xavier Becerra ("Becerra") in 2019, and a follow-up set in early 2020. Both sets of		
2	interrogatories sought Becerra's contentions as to the "authorized participant" exception to the		
3	California "open carry" ban on firearms.		
4	3. True copies of excerpts Becerra's responses to the first and second sets of		
5	interrogatories are attached hereto as Exhibits 1 and 2 respectively.		
6	4. On January 23, 2020, I took the deposition of Blake Graham as the Rule		
7	30(b)(6) designee of the State of California. A true copy of excerpts of the deposition		
8	transcript is attached as Exhibit 3.		
9	5. Following this deposition, we filed a letter brief with Magistrate Judge		
10	Hixson seeking further answers to deposition questions, including questions going to the		
11	"authorized participant" exception. After receiving Judge Hixson's ruling, which denied the		
12	request and observed that the proper means of seeking the information was through contention		
13	interrogatories, I requested that Becerra answer several interrogatories on point. Becerra,		
14	through counsel, declined to answer the questions.		
15	6. We filed further letter briefing, and on September 4, 2020, Judge Hixson		
16	ordered Becerra to answer the interrogatories. Instead, Becerra filed a motion challenging		
17	Judge Hixson's ruling, which remains pending.		
18	7. I then wrote to counsel for all defendants, including Becerra, and		
19	indicated that in light of this ongoing discovery issues, we intended to argue that the statute is		
20	void for vagueness. I also inquired whether counsel believed an amendment was required to		
21	raise this argument, and, if so, whether counsel would stipulate to one. A true copy of my		
22	email and counsel's response on behalf of Becerra is attached as Exhibit 4.		
23	I declare under penalty of perjury under the laws of the United States that the		
24	foregoing is true and correct.		
25	Executed this 23rd day of September 2020, at Los Angeles, California.		
26	s/ Damion Robinson		
27	Damion D. D. Robinson		
28			

		41	
< 1 ₋	XAVIER BECERRA		
2	Attorney General of California ANTHONY R. HAKL		
3	Supervising Deputy Attorney General Noreen P. Skelly		
4	Deputy Attorney General State Bar No. 186135		
	1300 I Street, Suite 125		
5	P.O. Box 944255 Sacramento, CA 94244-2550		
6	Telephone: (916) 210-6057 Fax: (916) 324-8835		
7	E-mail: Noreen.Skelly@doj.ca.gov Attorneys for Defendant Attorney General Xavier		
8	Becerra		
9	IN THE LINITED STAT	TES DISTRICT COURT	
10			
11	FOR THE NORTHERN DISTRICT OF CALIFORNIA		
12	SAN FRANCISCO DIVISION		
13			
14	MICHAEL ZELENY, an individual,	3:17-cv-07357 RS (NC)	
15	Plaintiff,	DEFENDANT ATTORNEY GENERAL	
16	v.	XAVIER BECERRA'S RESPONSES TO PLAINTIFF MICHAEL ZELENY'S FIRST SET OF INTERROGATORIES ²	
17	CAVIN NEWSOM1 on individual in his	TIRST SET OF INTERROGATORIES	
18	GAVIN NEWSOM ¹ , an individual, in his official capacity; XAVIER BECERRA, an		
19	individual, in his official capacity; CITY OF MENLO PARK, a municipal corporation;		
20	and DAVE BERTINI, in his official capacity,	is.	
21	Defendants.		
22			
23	PROPOUNDING PARTY: Plaintif	f Michael Zeleny	
24	ANSWERING PARTY: Defend	ant Attorney General Xavier Becerra	
25	SET NUMBER: One		
26	¹ Although Edmund G. Brown, Jr., sued in	his official capacity as the Governor of	
27	California, has been dismissed from this matter, I substitute Governor Gavin Newsom for former G	Defendant Becerra updates the caption to	
28	25(d)(1) of the Federal Rules of Civil Procedure. ² Verification to follow.		

PRELIMINARY STATEMENT

For purposes of these interrogatories, Plaintiff Zeleny has used the terms "YOU" and "YOUR" to, "refer to Xavier Becerra as the Attorney General of the State of California. These interrogatories seek the official position of the State of California." (Plaintiff Zeleny's Interrogatories, p. 2, lines 22-24.) Defendant Becerra objects to Plaintiff Zeleny's definition of "YOU" and "YOUR" as encompassing the official position of the State of California. The phrase "the official position of the State of California" is vague and overbroad. The State of California is made up of the Executive, Legislative, and Judicial branches of government, which are separate and co-equal. California's Executive branch includes a number of elected officials including, but not limited to the Attorney General of California. Moreover, the State of California is not a defendant in this action—nor would it be an appropriate defendant in this action. As a general matter, the proper respondent or defendant in a challenge to a state law or policy is the officer or agency charged with implementing it. See *Serrano v. Priest*, 18 Cal.3d 728, 752 (1976); *State v. Superior Court, 12 Cal.3d 237, 255* (1974).

Defendant Becerra objects to each interrogatory to the extent that it purports to impose any obligation or requirement greater than or different to the obligations or requirements set forth in the Federal Rules of Civil Procedure and/or the applicable rules and orders of this Court.

Defendant Becerra objects to each interrogatory to the extent that it calls for the disclosure of information protected from disclosure by the attorney work-product doctrine, the attorney-client privilege, the deliberative process privilege and/or any other applicable privilege or protection. Should Defendant Becerra disclose any privileged or otherwise protected information in these responses, the disclosure is inadvertent and does not constitute a waiver of the privilege or protection.

Defendant Becerra has not completed the investigation of the facts and issues relating to Plaintiff Zeleny's claims and has not completed discovery in this action. All of the answers contained herein are based solely upon information and documents which are presently available to, and specifically known by, Defendant Becerra, and the answers disclose only those contentions which presently occur to Defendant Becerra. Further discovery, independent

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investigation, legal research and analysis may supply additional facts and may lead to additions, changes, and variations from the answers herein.

The following answers are given without prejudice to the right to produce evidence and/or witnesses or rely on facts which Defendant Becerra may later discover. Defendant Becerra accordingly reserves the right to change any and all answers herein as additional facts are ascertained, witnesses identified and legal research is completed. The answers contained herein are made in good faith in an attempt to supply as much factual information and as much specification of legal contention as is presently known, and in no way prejudices Defendant Becerra in relation to further discovery and proceedings.

Defendant Becerra incorporates by reference every general objection set forth above into each specific answer set forth below. A specific response may repeat a general objection for emphasis or some other reason. The failure to include a general objection in any specific answer does not waive any general objection to that interrogatory.

INTERROGATORY NO. 1: State all facts on which You base Your contention, if any, that California Penal Code § 26350 is constitutional under the Second Amendment, including any legitimate goals or public interests intended to be served by that statute.

[As used in these interrogatories,

- (a) "You" and "Your" refer to Xavier Becerra as the Attorney General of the State of California. These interrogatories seek the official position of the State of California;
- (b) "Second Amendment" means the Second Amendment to the United States Constitution].

RESPONSE TO INTERROGATORY NO. 1:

Defendant Becerra incorporates by reference the above-stated general objections as though fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to Plaintiff Zeleny's claims, and not reasonably calculated to lead to the discovery of information that is relevant to Plaintiff's claims. Defendant Becerra also objects to this interrogatory on the grounds that it seeks Defendant Becerra's contentions regarding the constitutionality of California

1 Legislature considered including other forms of "speech or expressive conduct" in enacting Penal 2 Code §§ 26375 and 26405, subdivision (r). Thus, Defendant Becerra is unable to respond to this interrogatory. 3 4 **INTERROGATORY NO. 9**: Identify all documents bearing upon, supporting, or 5 reflecting the reasons set forth in Your response to the preceding interrogatory. 6 **RESPONSE TO INTERROGATORY NO. 9:** 7 Defendant Becerra incorporates by reference the above-stated general objections as though 8 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is 9 vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to 10 Plaintiff Zeleny's claims, and not reasonably calculated to lead to the discovery of information 11 that is relevant to Plaintiff's claims. 12 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as 13 follows: N/A. 14 **INTERROGATORY NO. 10:** Does the phrase "authorized participant" as used in 15 California Penal Code §§ 26375 and 26405(r) refer to a participant authorized by a governmental 16 body or agency? 17 **RESPONSE TO INTERROGATORY NO. 10:** 18 Defendant Becerra incorporates by reference the above-stated general objections as though 19 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is 20 vague and overbroad. Moreover, it seeks information irrelevant to Plaintiff Zeleny's claims, and 21 not reasonably calculated to lead to the discovery of information that is relevant to Plaintiff's 22 claims. 23 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as follows: Penal Code §§ 26375 and 26405, subdivision (r) do not include definitions of the phrase 24 25 "authorized participant." 26 However, according to the Legislative history of Penal Code § 26375, that section permits 27 the use of unloaded handguns as an "entertainment props." (See DOJ 000219) Additionally, the 28 Entertainment Firearms Permit only authorizes the permit holder "to possess firearms loaned to

1 the permitholder for use solely as a prop in a motion picture, television, video, theatrical, or other 2 entertainment production or event." (Penal Code § 29500.) Thus, the exceptions set forth in 3 Penal Code §§ 26375 and 26405, subdivision (r) are available only to those using unloaded firearms loaned to them for use as "entertainment props" in a motion picture, television, video, 5 theatrical, or other entertainment production or event. 6 **INTERROGATORY NO. 11**: If Your answer to Interrogatory No. 10 is in the 7 affirmative, identify the governmental bodies or agencies from which authorization is required? **RESPONSE TO INTERROGATORY NO. 11:** 8 9 Defendant Becerra incorporates by reference the above-stated general objections as though 10 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is 11 vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to 12 Plaintiff Zeleny's claims, and not reasonably calculated to lead to the discovery of information that is relevant to Plaintiff's claims. 13 14 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as follows: N/A. 15 16 **INTERROGATORY NO. 12**: If Your answer to Interrogatory No. 10 is in the 17 affirmative, state all bases for your contention that the phrase "authorized participant," as used in 18 California Penal Code §§ 26375 and 26405(r), refers to a participant authorized by a 19 governmental body or agency? 20 **RESPONSE TO INTERROGATORY NO. 12:** 21 Defendant Becerra incorporates by reference the above-stated general objections as though 22 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is 23 vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to 24 Plaintiff Zeleny's claims, and not reasonably calculated to lead to the discovery of information 25 that is relevant to Plaintiff's claims. 26 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as

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follows: N/A.

INTERROGATORY NO. 13: If your answer to Interrogatory No. 10 is in the negative, state the persons or entities whose authorization is required in order for California Penal Code §§ 26375 and 26405(r) to exempt the carrying of firearms from California Penal Code §§ 26350 and 26405.

RESPONSE TO INTERROGATORY NO. 13:

Defendant Becerra incorporates by reference the above-stated general objections as though fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is vague and overbroad. Moreover, it seeks information irrelevant to Plaintiff Zeleny's claims, and not reasonably calculated to lead to the discovery of information that is relevant to Plaintiff's claims.

Subject to, and without waiving the foregoing objections, Defendant Becerra responds as follows: The Legislature enacted certain exceptions to the general prohibitions on openly carrying firearms.

Penal Code § 26375 provides that section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television or video production, or entertainment event, when the participant lawfully uses the handgun as part of that production or event, as part of rehearsing or practicing for participation in that production or event, or while the participant or authorized employee or agent is at that production or event, or rehearsal or practice for that production or event. (Pen. Code, § 26375.) According to the Legislative history, Penal Code § 26375 permits the use of unloaded handguns as an "entertainment props." (See DOJ 000219)

Likewise, Penal Code § 26405, subdivision (r) provides that Penal Code § 26400 does not apply to, or affect, the carrying of an unloaded firearm that is not a handgun by an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television, or video production or entertainment event, when the participant lawfully uses that firearm as part of that production or event, as part of rehearsing or practicing for participation in

that production or event, or while the participant or authorized employee or agent is at that production or event, or rehearsal or practice for that production or event.

And, Penal Code § 29500 provides that, "Any person who is at least 21 years of age may apply for an entertainment firearms permit from the Department of Justice. An entertainment firearms permit authorizes the permit holder to possess firearms loaned to the permitholder for use solely as a prop in a motion picture, television, video, theatrical, or other entertainment production or event." (Added by Stats.2010, c. 711 (S.B. 1080).)

INTERROGATORY NO. 14: Do California Penal Codes §§ 26375 and 26405(r) require that the "motion picture, television or video production" or "entertainment event" itself be authorized in order to exempt participants from California Penal Code §§ 26350 and 26405?

RESPONSE TO INTERROGATORY NO. 14:

Defendant Becerra incorporates by reference the above-stated general objections as though fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to Plaintiff Zeleny's claims, and not reasonably calculated to lead to the discovery of information that is relevant to Plaintiff's claims.

Subject to, and without waiving the foregoing objections, Defendant Becerra responds as follows: Penal Code §§ 26375 and 26405(r) do not address whether the "motion picture, television or video production" or "entertainment event" itself be authorized in order to exempt participants from California Penal Code §§ 26350 and 26405. Accordingly, Defendant Becerra is unable to respond to this interrogatory.

INTERROGATORY NO. 15: If your response to Interrogatory No. 14 is in the affirmative, identify all persons or entities whose authorization of the "motion picture, television or video production" or "entertainment event" is required in order to exempt participants from California Penal Code §§ 26350 and 26405.

RESPONSE TO INTERROGATORY NO. 15:

Defendant Becerra incorporates by reference the above-stated general objections as though fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is

1	vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to
2	Plaintiff Zeleny's claims, and not reasonably calculated to lead to the discovery of information
3	that is relevant to Plaintiff's claims.
4	Subject to, and without waiving the foregoing objections, Defendant Becerra responds as
5	fol <mark>lows: N/A.</mark>
6	INTERROGATORY NO. 16: State all of the bases for Your response to Interrogatory
7	No. 14.
8	RESPONSE TO INTERROGATORY NO. 16:
9	Defendant Becerra incorporates by reference the above-stated general objections as though
10	fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is
11	vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to
12	Plaintiff Zeleny's claims, and not reasonably calculated to lead to the discovery of information
13	that is relevant to Plaintiff's claims.
14	Subject to, and without waiving the foregoing objections, Defendant Becerra responds as
15	follows: N/A.
16	INTERROGATORY NO. 17: State all facts supporting your interpretation of California
17	Penal Code §§ 26375 and 26405(r).
18	RESPONSE TO INTERROGATORY NO. 17:
19	Defendant Becerra incorporates by reference the above-stated general objections as though
20	fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is
21	vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to
22	Plaintiff Zeleny's claims, and not reasonably calculated to lead to the discovery of information
23	that is relevant to Plaintiff's claims.
24	Subject to, and without waiving the foregoing objections, Defendant Becerra responds as
25	follows: Defendant Becerra has not issued an interpretation of California Penal Code §§ 26375
26	and 26405, subdivision (r). However, the California Department of Justice does possess

documents that are related to firearms generally. See and DOJ $0001282\text{-DOJ}\ 001312$.

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Case 3:17-cv-07357-RS Document 145-1 Filed 09/24/20 Page 12 of 36

1 2	Dated: April 3, 2019	Respectfully submi	tted,
3		XAVIER BECERRA Attorney General of ANTHONY R. HAKL	f California
4		ANTHONY R. HAKL Supervising Deputy	Attorney General
5		ylan y	flee
6		Noreen P. Skelly	,
7	5	Deputy Attorney Go Attorneys for Defen	eneral dant Attorney General
8		Xavier Becerra	
9			
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12 13			*:
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DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: Zeleny, Michael v. Edmund G. Brown, et al.

No.: 3:17-cv-07357 RS (NC)

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

On <u>April 3, 2019</u>, I served the attached **DEFENDANT ATTORNEY GENERAL XAVIER BECERRA'S RESPONSES TO PLAINTIFF MICHAEL ZELENY'S FIRSTS SET OF INTERROGATORIES** by placing a true copy thereof enclosed in a sealed envelope with the **Golden State Overnight**, addressed as follows:

David William Affeld Damion D. D. Robinson Affeld Grivakes LLP 2049 Century Park East, Suite 2460

Los Angeles, CA 90067 Tel: (310) 979-8700 Fax: (310) 979-8701

Email: dwa@agzlaw.com

<u>dr@agzlaw.com</u> Attorneys for Plaintiff Todd H. Master

Howard Rome Martin & Ridley LLP 1900 O'Farrell Street, Suite 280

San Mateo, CA 94403 Tel: (650) 365-7715 Fax: (650) 364-5297

Email: tmaster@hrmrlaw.com

Attorneys for Defendants City of Menlo Park

and Dave Bertini

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 3, 2019, at Sacramento, California.

Eileen A. Ennis

Declarant

Signature

SA2018100198 13607465.docx13607465.DOCX

	22		
1	XAVIER BECERRA Attorney General of California		
2	2 ANTHONY R. HAKL		
3			
4		WI	
5			
6	1300 I Street, Suite 125 P.O. Box 944255		
7	Sacramento, CA 94244-2550 Telephone: (916) 210-6045		
8	Fax: (916) 324-8835 E-mail: John.Killeen@doj.ca.gov		
9	Attorneys for Defendant Attorney General Xavier Becerra		
10			
11	IN THE UNITED STATES	DISTRICT COURT	
12	FOR THE NORTHERN DISTRICT OF CALIFORNIA		
13	SAN FRANCISCO DIVISION		
14			
15		17-cv-07357 RS	
16		EFENDANT ATTORNEY GENERAL	
17	v. XA	AVIER BECERRA'S RESPONSES TO LAINTIFF MICHAEL ZELENY'S	
18		TERROGATORIES, SET TWO	
19			
20			
21	and DAVE BERTINI, in his official capacity,		
22	Defendants.		
23			
24	PROPOUNDING PARTY: Plaintiff M	ichael Zeleny	
25	ANSWERING PARTY: Defendant	Attorney General Xavier Becerra	
26	SET NUMBER: Two		
27			
28			

PRELIMINARY STATEMENT

Defendant Becerra objects to each interrogatory to the extent that it purports to impose any obligation or requirement greater than or different to the obligations or requirements set forth in the Federal Rules of Civil Procedure and/or the applicable rules and orders of this Court.

Defendant Becerra objects to each interrogatory to the extent that it calls for the disclosure of information protected from disclosure by the attorney work-product doctrine, the attorney-client privilege, the deliberative process privilege and/or any other applicable privilege or protection. Should Defendant Becerra disclose any privileged or otherwise protected information in these responses, the disclosure is inadvertent and does not constitute a waiver of the privilege or protection.

Defendant Becerra objects to each interrogatory to the extent that it calls for him to interpret what the Legislature intended when it drafted any of the statutory provisions at issue in this case.

Defendant Becerra has not completed the investigation of the facts and issues relating to Plaintiff Zeleny's claims and has not completed discovery in this action. All of the answers contained herein are based solely upon information and documents which are presently available to, and specifically known by, Defendant Becerra, and the answers disclose only those contentions which presently occur to Defendant Becerra. Further discovery, independent investigation, legal research and analysis may supply additional facts and may lead to additions, changes, and variations from the answers herein.

The following answers are given without prejudice to the right to produce evidence and/or witnesses or rely on facts which Defendant Becerra may later discover. Defendant Becerra accordingly reserves the right to change any and all answers herein as additional facts are ascertained, witnesses identified and legal research is completed. The answers contained herein are made in good faith in an attempt to supply as much factual information and as much specification of legal contention as is presently known, and in no way prejudices Defendant Becerra in relation to further discovery and proceedings.

Defendant Becerra incorporates by reference every general objection set forth above into each specific answer set forth below. A specific response may repeat a general objection for emphasis or some other reason. The failure to include a general objection in any specific answer does not waive any general objection to that interrogatory.

INTERROGATORY NO. 22: Is an individual who has a valid "entertainment firearms permit" issued pursuant to Penal Code § 29500 an "authorized participant" within the meaning of Penal Code §§ 26375 and 26405(r)?

RESPONSE TO INTERROGATORY NO. 22:

Defendant Becerra incorporates by reference the above-stated general objections as though fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it poses a question of pure law. Defendant Becerra is not required to respond to interrogatories raising questions of pure law. See *AngioScore, Inc. v. TriReme Med., Inc.*, No. 12-cv-03393-YGR (JSC), 2014 WL 7188779, at *5 (N.D. Cal. Dec. 16, 2014) ("[I]nterrogatories directed to issues of 'pure law'—i.e., abstract legal issues not dependent on the facts of the case are not permitted") (citation and some internal punctuation omitted). Defendant Becerra also objects to this interrogatory because it calls for him to interpret what the Legislature intended when it drafted any of the statutory provisions at issue in this case.

Subject to, and without waiving the foregoing objections, Defendant Becerra responds as follows: Penal Code §§ 26375 and 26405, subdivision (r) do not include definitions of the phrase "authorized participant." Thus, what the Legislature intended by that phrase is a question of statutory interpretation.

However, according to the Legislative history of Penal Code § 26375, that section permits the use of unloaded handguns as an "entertainment props." (See DOJ 000219) Additionally, the Entertainment Firearms Permit authorizes the permit holder "to possess firearms loaned to the permitholder for use solely as a prop in a motion picture, television, video, theatrical, or other entertainment production or event." (Penal Code § 29500.) Thus, it is possible to infer that the Legislature intended the exceptions set forth in Penal Code §§ 26375 and 26405, subdivision (r) to be available only to those using unloaded firearms loaned to them for use as "entertainment

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props" in a motion picture, television, video, theatrical, or other entertainment production or event.

INTERROGATORY NO. 23: State all facts supporting your response to the preceding interrogatory.

RESPONSE TO INTERROGATORY NO. 23:

Defendant Becerra incorporates by reference the above-stated general objections as though fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it poses a question of pure law. Defendant Becerra is not required to respond to interrogatories raising questions of pure law. See AngioScore, Inc. v. TriReme Med., Inc., No. 12-cv-03393-YGR (JSC), 2014 WL 7188779, at *5 (N.D. Cal. Dec. 16, 2014) ("[I]nterrogatories directed to issues of 'pure law'—i.e., abstract legal issues not dependent on the facts of the case are not permitted") (citation and some internal punctuation omitted). Defendant Becerra also objects to this interrogatory because it calls for him to interpret what the Legislature intended when it drafted any of the statutory provisions at issue in this case.

Subject to, and without waiving the foregoing objections, Defendant Becerra responds as follows: Penal Code §§ 26375 and 26405, subdivision (r) do not include definitions of the phrase "authorized participant." Thus, what the Legislature intended by that phrase is a question of statutory interpretation.

However, according to the Legislative history of Penal Code § 26375, that section permits the use of unloaded handguns as an "entertainment props." (See DOJ 000219) Additionally, the Entertainment Firearms Permit authorizes the permit holder "to possess firearms loaned to the permitholder for use solely as a prop in a motion picture, television, video, theatrical, or other entertainment production or event." (Penal Code § 29500.) Thus, it is possible to infer that the Legislature intended the exceptions set forth in Penal Code §§ 26375 and 26405, subdivision (r) to be available only to those using unloaded firearms loaned to them for use as "entertainment props" in a motion picture, television, video, theatrical, or other entertainment production or event.

1 INTERROGATORY NO. 24: State all facts supporting your contention that the definition of "authorized participant" under Penal Code §§ 26375 and 26405(r) refers to a person with an 2 3 "entertainment firearms permit" issued pursuant to Penal Code § 29500. 4 **RESPONSE TO INTERROGATORY NO. 24:** Defendant Becerra incorporates by reference the above-stated general objections as though 5 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it poses 6 a question of pure law. Defendant Becerra is not required to respond to interrogatories raising 7 questions of pure law. See AngioScore, Inc. v. TriReme Med., Inc., No. 12-cv-03393-YGR (JSC), 8 2014 WL 7188779, at *5 (N.D. Cal. Dec. 16, 2014) ("[I]nterrogatories directed to issues of 'pure 9 10 law'—i.e., abstract legal issues not dependent on the facts of the case are not permitted") (citation 11 and some internal punctuation omitted). 12 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as follows: Defendant Becerra has not made this contention. What the Legislature intended when it 13 14 used the phrase "authorized participant" is a question of statutory interpretation. 15 INTERROGATORY NO. 25: Identify all documents bearing upon, supporting, or 16 reflecting the facts set forth in Your response to the preceding interrogatory. 17 **RESPONSE TO INTERROGATORY NO. 25:** Defendant Becerra incorporates by reference the above-stated general objections as though 18 19 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is 20 vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to Plaintiff Zeleny's claims, and not reasonably calculated to lead to the discovery of information 22 that is relevant to Plaintiff's claims. Subject to, and without waiving the foregoing objections, Defendant Becerra responds as follows: N/A. /// /// ///

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Case 3:17-cv-07357-RS Document 145-1 Filed 09/24/20 Page 20 of 36

1		
2	Dated: March 13, 2020	Respectfully submitted,
3 4		XAVIER BECERRA Attorney General of California ANTHONY R. HAKL
5		Supervising Deputy Attorney General
6		John Haller
7		Noreen P. Skelly
8		Deputy Attorney General JOHN W. KILLEEN
9		Deputy Attorney General Attorneys for Defendant Attorney General Xavier Becerra
10		Xavier Becerra
11		
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DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: Zeleny, Michael v. Edmund G. Brown, et al.

No.: 3:17-ev-07357 RS (NC)

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

On March 13, 2020, I served the attached DEFENDANT ATTORNEY GENERAL XAVIER BECERRA'S RESPONSES TO PLAINTIFF MICHAEL ZELENY'S INTERROGATORIES, SET TWO by placing a true copy thereof enclosed in a sealed envelope with the GOLDEN STATE OVERNIGHT COURIER SERVICE, addressed as follows:

David William Affeld Damion D. D. Robinson Affeld Grivakes LLP 2049 Century Park East, Suite 2460

Los Angeles, CA 90067

Tel: (310) 979-8700 Fax: (310) 979-8701

Email: dwa@agzlaw.com

dr@agzlaw.com

Attorneys for Plaintiff

Todd H. Master

Howard Rome Martin & Ridley LLP

1900 O'Farrell Street, Suite 280 San Mateo, CA 94403

Tel: (650) 365-7715 Fax: (650) 364-5297

Email: tmaster@hrmrlaw.com

Attorneys for Defendants City of Menlo Park

and Dave Bertini

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 13, 2020, at Sacramento, California.

Tracie L. Campbell

Declarant

Signature

SA2018100198 14523392 docx14523392 DOCX

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                   UNITED STATES DISTRICT COURT
2
                NORTHERN DISTRICT OF CALIFORNIA
 3
4
       MICHAEL ZELENY,
                                       ) Case No.
                                       ) CV 17-7357 JCS
5
                   Plaintiff,
6
       vs.
7
       EDMUND G. BROWN, Jr.
       et al.,
8
                  Defendants.
9
10
11
12
                      DEPOSITION OF BLAKE GRAHAM
13
                     Thursday, January 23rd, 2020
14
                                ---000---
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16
17
18
19
20
21
22
      Reported by:
       David A. Disbrow
23
       CSR No. 7768
24
25
```

```
1
     okay?
 2
          Α
               Yeah, I see that.
               What does "Authorized" mean in that clause
 3
          Q
4
     that I just read?
5
               MS. SKELLY: Objection; the deponent is not
6
     authorized to interpret the statute which was written
7
     by the Legislature and so he can't answer that
8
     question.
9
               THE WITNESS: I'm not aware of this
10
     "Authorized participant" being defined by the
11
     Legislature. I don't know that it's defined in DOJ
     regulations either.
12
13
     BY MR. ROBINSON:
14
          0
               Has the Attorney General's office issued an
15
     opinion about what an "Authorized participant" means if
16
     you know?
17
               I don't know that they have issued -- as I
          A
18
     said, this entertainment firearms permit area of the
19
     law is I guess an infinitesimal part of the overall
20
     firearms' scheme in the State and I don't think until
21
     now I've even been asked what that phrase meant.
22
               Do you have an understanding of what it means
          O
23
     now?
24
               MS. SKELLY: Objection; there's no relevance
25
     to the deponent's understanding of what the statute
```

1 means. The statute -- the document speaks for 2 itself. To the extent that any interpretation is needed it will be done by the Court. 3 4 MS. RAUCH: Join. 5 BY MR. ROBINSON: 6 You can answer. 0 7 I would have to do quite a bit of research 8 before I could come up with something on this. This kind of a definition when it's not defined by the 9 10 Legislature sometimes can be left to the agency but to 11 my knowledge we've not done regulations which would somehow clarify that and it's not something I can come 12 13 up with at the spur of the moment today. 14 Do you know if the DOJ has an official 0 15 position on what "Authorized participant" means? 16 MS. SKELLY: Objection; asked and answered. 17 THE WITNESS: Yeah, I think I've probably 18 said that just now in the last question 19 BY MR. ROBINSON: 20 Why don't you just go ahead and answer it Q 21 again. 22 Α Okay. 23 Does DOJ have an official position on what Q 24 "Authorized participant" means in the exemptions? 25

A

To my knowledge without -- lacking a

```
1
     regulation coming from DOJ or some official opinion
2
     from the Opinion Unit within the Attorney General's
     office, I'm not aware of one.
3
4
               Do you know who does the authorizing in terms
5
     of an authorized participant?
6
               MS. SKELLY: Objection; the deponent is not
7
     authorized to interpret the statute which was written
8
     by the Legislature. If you need interpretation it
     will be done by the Court.
9
10
               MR. ROBINSON: You can go ahead.
11
               MS. SKELLY: It's also vague.
12
               THE WITNESS: I'm going to speak in general
13
     about regulations for example because lacking a
14
     definitive answer on what that means from the
15
     Legislature, if we were asked by a stakeholder in the
16
     industry meaning a prop house or several different
17
     prop houses, "Hey, can you guys define that for us,"
     we might go down the path of involving them over
18
19
     several months and getting feedback from the public
20
     and asking how that would get flushed out in a normal
     period of time. It could be a a year-and-a-half
21
22
     process to get a series of regulations done. Often
23
     regulations like this would be carved out as part of
     that process and it would be a back-and-forth process
24
25
     on proposed regulations and then there's public
```

- feedback given so that being so industry-specific, it
- 2 could be taken several different ways potentially by
- different prop houses. We would want to get their
- feedback on what they feel that means within the
- industry, things like that, how that might -- we'd
- have to go through the Legislative analysis, all the
- various bills, and see if that somehow is tied in.
- Earlier, I read a document that you
- provided to me that was about an older bill and there
- was some language in there -- we can go back and look
- at those things as well.
- 12 BY MR. ROBINSON:
- Does the DOJ authorize participants in motion
- 14 picture, television or video productions or
- 15 entertainment events?
- MS. RAUCH: Vaque.
- 17 THE WITNESS: We have the firearm
- entertainment permit process. That would certainly
- be a consideration in the overall evaluation of
- something that I would ask my staff to look at; what
- does the industry want to be a factor, what is our
- role in this, and if I was involved in the
- conversation I would certainly suggest that having a
- permit be part of that and then maybe some other
- industry qualifiers that they would suggest but I

- don't really know what that is at this point. I've
- 2 never had that conversation with the industry
- 3 specific to that definition.
- 4 BY MR. ROBINSON:
- 5 Q Aside from the entertainment firearms permit
- 6 is there any person or group within DOJ that authorizes
- 7 participants in motion picture, television, video
- 8 production or entertainment events?
- 9 MS. SKELLY: Objection; the question calls
- 10 for an interpretation of the statute which the
- deponent can't do because he's not authorized to
- speak on behalf of the Legislature.
- 13 BY MR. ROBINSON:
- 14 You can go ahead and answer the question.
- 15 **A** Yeah, I really don't have an answer beyond
- what I've already provided.
- Okay. I'm just going to ask you to answer it
- again.
- 19 **A** Can you repeat the question?
- 20 Sure. Other than the or let me ask a
- foundational question. Does the entertainment firearms
- permit qualify someone as an authorized participant in
- a motion picture, television or video production or
- entertainment event?
- MS. SKELLY: Objection; the deponent is not

- authorized to speak on behalf of the Legislature or
- is not authorized to interpret the statute. Only the
- 13 Legislature or the Courts can do that but he's not
- 4 authorized to speak to whether or not the firearms
- entertainment permit would constitute authorization
- under Penal Code Section 26375.
- 7 MR. ROBINSON: Counsel, are you instructing
- 8 him not to answer the question?
- 9 MS. SKELLY: No, I would have said so.
- 10 MR. ROBINSON: Then feel free to object to
- 11 form or the fact that it's outside the scope of the
- deposition notice but the continual objections on the
- basis that the witness is not authorized or permitted
- to testify about certain topics are inappropriate.
- 15 They are not proper deposition objections.
- MS. SKELLY: In this case, you have noticed
- the deposition for a 30(b) deponent from DOJ. You
- are asking that person questions that require him to
- interpret the Penal Code Section. He can't do that
- because he doesn't know what the Legislature intended
- so my objection is as to his competence to interpret
- the statute drafted by the Legislature.
- MR. ROBINSON: Counsel, if the witness that
- you designated for a deposition is not competent to
- testify as a witness then call the deposition and

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1
     BY MR. ROBINSON:
 2
          0
                In order to become an authorized participant?
 3
               MS. SKELLY: Objection; exceeds the scope.
 4
               MS. RAUCH:
                            Same objections and join.
 5
                              Yeah. There may be other
                THE WITNESS:
 6
     things but that's all I can give you at this point.
 7
     BY MR. ROBINSON:
 8
          Q
               Okay. What if Mr. Zeleny owns his own gun,
     he doesn't need to get it from a prop house, he doesn't
9
10
     need to borrow it from anybody?
11
               MS. RAUCH: Same objections.
               MS. SKELLY: Objection; exceeds the scope.
12
13
               THE WITNESS: I don't know that I've ever had
14
     this question posed to me before. I'm not sure that
     I have an answer or as I sit here, enough experience
15
16
     to answer that question. There are multiple laws in
17
     play and I would want to work them out and I can't
18
     give you an answer right at this moment.
19
     BY MR. ROBINSON:
20
                What laws are in play?
          Q
21
          Α
                The entertainment firearm permit laws, open
22
     carry laws, the dealer laws that deal with transfers of
23
     quns meaning the loans of guns potentially. If it's --
24
     in your hypothetical, it's a personally loaned weapon
25
     so I would want to make sure that there's no issues
```

```
1
     legal conclusion.
 2
               MS. RAUCH:
                           Join.
 3
                             My question is was there a
               THE WITNESS:
 4
                It sounded like a statement to me.
 5
     BY MR. ROBINSON:
               Yeah. Your question is does he have to get
6
          0
7
     -- in order to not -- in order to fall within 26375 is
8
     it the position of the DOJ that Mr. Zeleny is required
     to get some kind of a permit from the City of Menlo
9
10
     Park?
11
               MS. SKELLY: Objection; exceeds the scope.
12
               MS. RAUCH: Same objections as I've stated
13
     previously.
14
               THE WITNESS: I don't think I have the
     knowledge to answer that question. I think I would
15
16
     have to elevate something like that above me to
17
     potentially get something like that if it was posed
     to us other than in this fashion here.
18
19
     BY MR. ROBINSON:
20
               If Mr. Zeleny has an entertainment firearm
          Q
     permit from the DOJ does that make him an authorized
21
22
     participant within the meaning of 26375?
23
               MS. SKELLY: Objection; exceeds the scope,
24
     and asked and answered.
25
               THE WITNESS: I would have the same answer as
```

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1
     I did to the last question.
2
               THE REPORTER: Sorry?
3
               THE WITNESS: I would have the same answer as
4
     I did to the last question. I would attempt, if I
5
     became aware of such a question through a normal
     course of business, I would attempt to elevate that
6
7
     through the chain of command because again, it's a
8
     scenario that we or I have not encountered.
9
     BY MR. ROBINSON:
10
               The phrase, "Authorized participant," is the
          0
11
     authorization in your understanding of the motion
     picture, television, video production or entertainment
12
13
     event" or is it of the particular participant in the
14
     event?
15
               MS. SKELLY: Objection; exceeds the scope.
16
               THE WITNESS: This type of definition if it
17
     was ever created would ideally flush out the answer
     to the question you just asked me but at this time we
18
19
     do not have to my knowledge something in regulations
20
     or in the Penal Code that gives us guidance to your
     specific question.
21
22
     BY MR. ROBINSON:
23
          Q
               Are there particular people within the DOJ
24
     that you would talk with about the question?
25
          Α
               Yes.
```

Damion Robinson

From: John Killeen <John.Killeen@doj.ca.gov>
Sent: Tuesday, September 22, 2020 6:19 PM
To: Damion Robinson; Todd H. Master

Cc: David Affeld; Brian R. England; David Markevitch

Subject: RE: ZELENY/Newsom

Damion,

The case is nearly three years old. We would not stipulate to the amendment of the complaint, which does not currently assert a claim that the open carry laws are vague on their face.

Thanks,

John

From: Damion Robinson <DR@agzlaw.com> Sent: Sunday, September 20, 2020 10:23 PM

To: John Killeen < John.Killeen@doj.ca.gov>; Todd H. Master < tmaster@hrmrlaw.com>

Cc: David Affeld <dwa@agzlaw.com>; Brian R. England <bre@agzlaw.com>; David Markevitch <dm@agzlaw.com>

Subject: ZELENY/Newsom

John and Todd:

In light of the current discovery dispute relating to interpretation of the "authorized participant" exception, we intend to pursue the argument that the statute is void for vagueness.

We believe that this argument is encompassed in our existing challenge to the statute as unconstitutional so that a pleading amendment is not necessary. *See Skinner v. Switzer*, 562 U.S. 521, 530 (2011) ("a complaint need not pin plaintiff's claim for relief to a precise legal theory"); *see also Alvarez v.* Hill, 518 F.3d 1152, 1157 (9th Cir. 2008).

Nonetheless, if you believe that an amendment is needed, we would be willing to make one either by stipulation or by motion, in an abundance of caution. Please let me know as soon as possible whether you will require an amendment, and if so, whether you will stipulate.

Best, Damion

Damion Robinson AFFELD GRIVAKES LLP 2049 Century Park East, Suite 2460 Los Angeles, CA 90067 Tel. (310) 979-8700 | Fax (310) 979-8701

* * *

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1	PROOF OF SERVICE
2	I hereby certify that on September 24, 2020, I electronically filed the foregoing
3	I hereby certify that on September 24, 2020, I electronically filed the foregoing document using the Court's CM/ECF system. I am informed and believe that the CM/ECF system will send a notice of electronic filing to the interested parties.
4	<u>s/ Gabrielle Bruckner</u> Gabrielle Bruckner
5	Gaoriene Bruckner
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